

14-Mar-2005 2005-0026634

Has not been compared with original

Tulare COUNTY RECORDER

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

FMC Technologies, Inc.  
Legal Department  
Attn: Dawn Gard  
200 East Randolph Drive  
Chicago, Illinois 60601  
Telephone: (312) 861-5887

(Space Above For Recorder's Use)

**COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY**

**APN 199-190-023-000**

**22700 Road 196**

**Lindsay, California 93247**

This instrument is an environmental restriction  
*pursuant to California Civil Code Section 1471*

THIS COVENANT AND AGREEMENT (this "Covenant") is made as of the  
26 day of February, 2005, by FMC TECHNOLOGIES, INC., a Delaware corporation  
("Covenantor"), and CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
CENTRAL VALLEY REGION, a California public agency ("Covenantee"), with reference to  
the following facts:

A. Covenantor is the owner of real property described more particularly in  
Exhibit "A" attached hereto (the "Property").

B. Past manufacturing and packaging operations conducted at the Property by  
Covenantor and/or its predecessors-in-interest resulted in the release of certain contaminants into  
the soil and groundwater.

C. The Property is comprised of approximately ten (10) acres and is rectangular in  
shape. Historically, agricultural protective waxes, coatings, cleaners, and fungicides for fruits  
and vegetables were produced and packaged at the Property. Packaging equipment for  
agricultural products was also manufactured at the Property from approximately 1968 to 1984.  
In recent years operations on the Property have been downsized, with the Property currently  
being used for warehousing and distribution of agricultural chemical products, for the repair of  
food handling and packaging equipment, and as a service center for the maintenance of  
machinery systems in the area. Chemical formulation, mixing and packaging operations were  
formerly conducted in the north-central portion of the Property. Four dry wells ("DW-1 through  
DW-4") were formerly located in the northeast portion of the Property, near a five thousand  
(5,000) gallon washwater underground storage tank (the "Washwater UST"). The area of the

Washwater UST and the dry wells is collectively referred to as the former "Northeast Dry Well Area," as more particularly described in Exhibit "B", attached hereto and incorporated herein by this reference. The dry wells were removed in 1996 concurrent with remediation activities in the Northeast Dry Well Area. The following report documents past site use, activities and the removal of the dry wells:

*GeoTrans, Inc., 2004. Technical Information in Support of a Deed Restriction Document for FMC Technologies Lindsay Service Center, Lindsay, California, July 22.*

D. A site investigation work plan for soil sampling, dry well water and sediment sampling, monitoring well installation, groundwater sampling and aquifer testing focusing on the northeast portion of the Property was prepared by Bechtel Environmental, Incorporated (the "Bechtel Investigation"), in 1986, pursuant to a site characterization requested from the California Regional Water Quality Control Board ("RWQCB"). The Bechtel Investigation revealed fluid levels in the dry wells above those of static groundwater level, as well as a variety of organic compounds including orthophenylphenol ("OPP"), trichloroethylene, ethylbenzene, toluene, xylenes, organochlorine pesticides, 2-(4-thiazolyl) benzimidazole ("TBZ"), and methylene blue activated substances ("MBAS"). In addition, soil collected from a boring adjacent to the UST contained ethylbenzene, toluene, bis- (2-ethylhexyl) phthalate, 1,1,1-trichloroethane, and xylenes. Soils collected from other areas on the Property did not contain detectable levels of any target compounds. The following report fully describes this investigation:

*Bechtel Environmental, Incorporated, 1988. Site Investigation Work Plan for FMC Technologies Lindsay Service Center, Lindsay, California, April.*

E. Remediation site investigation began in 1991 and was performed by HSI GeoTrans (formerly Simon Hydro-Search and Hydro Search, Inc.). The site investigation included subsurface soil sampling programs both in the Northeast Dry Well Area and throughout the Property, confirmation sediment and liquid sampling from the dry wells, a property-wide soil gas survey, a ground penetrating radar survey to identify the location of buried utilities and structures which may have acted as conduits for volatile and non-volatile organic compound impacts to soil and groundwater, as well as monitoring well installation and groundwater sampling and analyses.

The results of the investigations suggest impacts resulting from the operation of the Northeast Dry Well Area were largely limited in horizontal extent to the area immediately surrounding the dry wells and within and immediately surrounding the Washwater UST. Leakage from the Washwater UST is unlikely because the Washwater UST was found to be intact and free of defects when it was excavated and removed under regulatory agency oversight in 1981. Results of the soil matrix and soil vapor sampling indicated that former underground storage tanks in the northwest corner of the Property, septic systems, and pipelines were not potential source areas for groundwater impacts. These results were agreed with by the RWQCB. Remediation therefore focused on the Northeast Dry Well Area, and was accomplished through a combination of soil vapor extraction ("SVE") and overdrilling, and removal of the dry wells using a large diameter caisson drill rig. The SVE system operated between February 1997 and December 1997. In January 1998 Covenantor submitted a request for closure of the SVE system

citing findings indicating vapors containing volatile organic compounds had been successfully mitigated in the area. The RWQCB subsequently granted permission to shut down the SVE system and no further action was required regarding soil contamination on the Property.

F. Concurrent with the soils investigation and remediation activities in the Northeast Dry Well Area, the RWQCB required Covenantor to investigate the downgradient and offsite extent of groundwater impacts. Prior samples from monitoring wells in the northeast area of the Property conducted by Bechtel Environmental, Incorporated, in 1986, were found to contain 1,1-dichloroethane, 1,1-dichloroethene, cis-1, 2-dichloroethene, tetrachloroethene, trichloroethene, 1,1,1-trichloroethane, acetone, 2-butanone, benzene, toluene, xylenes, 2-(4-thiazolyl)-1H-benzimidazole, orthophenylphenol, and botran. Subsequent groundwater monitoring by HSI GeoTrans indicated that the most downgradient on-site monitoring well ("MW6") only contained low levels of chloroform, 1,1-dichloroethene, and trichloroethene. Covenantor installed an offsite downgradient monitoring well at a ranch located directly southwest of the Property, and groundwater analysis from the newly installed well and nearby domestic water supply did not indicate the presence of any volatile organic compounds ("VOCs") above the method detection limit.

Covenantor has subsequently conducted periodic groundwater sampling of monitoring wells and the offsite downgradient monitoring well for more than two years and has demonstrated that groundwater impacts have not migrated past their site boundaries. In addition, the concentration of VOCs has progressively decreased through natural attenuation. On September 1, 1998, the RWQCB requested that Covenantor conduct two groundwater sampling events to confirm the trend of declining VOC concentrations. The RWQCB agreed that sampling events conducted in September 1998 and September 1999 confirmed the trend of declining VOC concentrations and concluded that no further groundwater monitoring is required at the Property.

G. On January 21, 2004, seven groundwater-monitoring wells ("MW-1, 2, 3, 5, 7, 8, and 10") on the Property were abandoned under permit from the County of Tulare, by BC2 Environmental, using the pressurized grout method in compliance with Bulletin 74-90 of the California Well Standards and Tulare County Regulations. Monitoring wells MW-4, MW-6, and MW-9 still remain on the Property. On January 22, 2004, none of the groundwater samples collected from the remaining wells were found to contain detectable concentrations of any VOCs using EPA Method 8240.

Well abandonment consisted of the pressurized injection of cement-bentonite grout into the casing, which forced the grout through the screened interval of the well and into the surrounding formation. The upper five (5) feet of each well was then over-drilled and removed and a "mushroom" cap of concrete was placed over the top of the remaining casing string. The area at the top of the former well at grade was dyed black to match the color of the surrounding asphalt if located in a parking lot area, or with native soil if located in an open area. For an added degree of protection, a thin layer of bentonite pellets were placed over the top of wells abandoned in open areas, prior to applying the upper soil layer. A well abandonment report dated February 25, 2004, was sent to the RWQCB.

H. In order to protect present and future public health and safety, Covenantor desires and intends to ensure that the Property is used in a manner that avoids potential harm to persons, the environment or property that may result from the presence of contaminants on the Property.

I. This Covenant is given to bind Covenantor and successive owners of the Property to restrictions on the future use of the Property, which restrictions are for the benefit of the Covenantee.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective covenants, conditions and restrictions ("Restrictions"), upon and subject to which the Property and every portion thereof shall be held, used, improved, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions shall run with the Property, and shall apply to and bind Covenantor and all successors in interest therein. The Restrictions are imposed upon the entire Property except as otherwise expressly stated herein.

1.2 Deemed Concurrence. All persons or entities acquiring any interest in the Property or any portion thereof shall be conclusively deemed by such acquisition, lease or possession to have irrevocably agreed to the Restrictions for and among themselves and their heirs, successors, assignees, agents, employees, licensees and lessees, and the agents, employees, licensees and lessees of such owners, heirs, successors, and assignees. In the event an owner of all or a portion of the Property (including Covenantor) conveys fee title to some portions of the Property to third parties but retains an interest in other portions of the Property, upon the conveyance of the portion(s) of the Property to third parties, the conveying owner shall forever be released and relieved of any further obligation or liability under the Covenant with respect to the portion of the Property so conveyed for events arising from and after the date of such transfer. Upon any owner's sale or transfer of its entire interest in the Property, such conveying owner (including Covenantor) shall forever be released and relieved of any further obligation or liability arising under this Covenant for events arising from and after the date of such transfer. Upon the termination of the leasehold interest of any occupant of the Property, such occupant shall forever be relieved of any further obligation or liability thereafter arising under this Covenant.

Nothing in this section shall prohibit or otherwise limit the Board from asserting that Covenantor remains responsible for remediation of the Property under applicable laws, or regulations subsequent to the conveyance of Property or portions of the Property to a third party. Covenantor's responsibility under this section shall not include any obligation to enforce use restrictions at the Property or portion of the Property subsequent to its conveyance to a third party. The obligation and responsibility to comply with and enforce the use restrictions shall be transferred to said third party.

1.3 Incorporation into Deeds and Leases. The Restrictions are hereby deemed to be incorporated by reference into each grant, creation or conveyance of any interest in the Property or portion thereof occurring after the date this instrument is recorded in the Official Records of Tulare County, California, whether or not referred to in the instrument effecting such grant, creation or conveyance.



1.4 Availability of Environmental Reports. Environmental Reports concerning monitoring, testing, investigation and remediation of the Property, including those environmental reports referenced above, are available for review at the RWQCB, at the address indicated below.

ARTICLE II  
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

2.1 Restrictions on Use. Covenantor shall restrict the use of the Property as follows:

No owner or occupant of this Property or any other party having custody or control of this Property shall build any of the following structures on the Property: (a) a residence or residences, (b) hospital for humans, (c) a school for persons under 21 years of age, (d) a day care center for children, and (e) any permanently occupied human habitation (including hotels and motels, which are used as permanent residences; hotels, motels, and temporary lodging facilities, which allow for temporary and/or extended stays), unless such owner or occupant has first obtained written consent in each instance from the Central Valley Regional Water Quality Control Board. The Property, or any portion thereof, may be used for commercial, retail (including restaurants and service stations), office, industrial or other business purposes, without the written consent of the Central Valley Regional Water Quality Control Board.

No owner or occupant of this Property or any other party having custody or control of this Property by any means shall excavate, grade, dig, drill or bore the soils in, on or under the Northeast Dry Well Area, unless such person has first obtained written consent in each instance from the Central Valley Regional Water Quality Control Board.

Water extraction from the Property must be limited as much as possible, including from already existing production wells located in the southwest corner of the Property. If water extraction is required, it must be limited to wells set deep within the lower aquifer (greater than 100 feet below ground surface ["bgs"]). In addition, an annular seal must be emplaced starting at ground surface and continuing through the upper zone of saturation (perched layer) and through the potentially confining clay zone (noted to start at approximately 65 feet bgs). Production wells may not be installed in the Northeast Dry Well Area, without the prior written consent of the Central Valley Regional Water Quality Control Board.

2.2 Notice in Agreements. Covenantor shall include in all deeds, leases or licenses of any portion of the Property the following statement:

"The [sold/leased/licensed/conveyed] property is subject to a use limitation based on past environmental contamination of a portion of the property. While that contamination has been substantially remediated, to protect public health and

safety, the property is subject to a covenant that runs with the land, which restricts the use of the property. The Central Valley Regional Water Quality Control Board is the Covenantee of this covenant. This statement is not a declaration that a hazard exists at the property."

### ARTICLE III ENFORCEMENT AND MORTGAGEE PROTECTION

3.1 Enforcement. This Covenant is entered into for the express benefit of Covenantee. Covenantor and/or Covenantee may enforce this Covenant or recover any and all damages recoverable under applicable law for breach in an action at law or in equity.

3.2 Mortgagee Protection. Notwithstanding any provision of this Covenant, no breach of the Restrictions, or the enforcement of any provisions contained in this Covenant shall affect, impair or defeat the lien or charge of any duly recorded mortgage or deed of trust encumbering any portion of the Property, or affect, impair, or defeat the interest of the mortgagee, or its successors or assigns (the "Mortgagee") pursuant to such a mortgage, provided that such mortgage is made in good faith and for value. All of the Restrictions shall be binding upon and effective against any owners whose title is derived through foreclosure, deed in lieu of foreclosure, or trustee's sale during the period of their ownership.

### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Covenantor, or any other owner of the Property or any portion thereof, may apply to Covenantee for a written variance from or modification of this Covenant. Covenantee's consent thereto shall not be unreasonably withheld.

4.2 Termination. Covenantor, or any other owner of the Property or any portion thereof or, with Covenantor's consent, any occupant of the Property, may apply to Covenantee for a termination of the Restrictions as they apply to all or any portion of the Property owned or occupied by the applicant. Covenantee's consent thereto shall not be unreasonably withheld.

4.3 Term. Unless modified or terminated in accordance with this Article or by Section 5.5 below, by law or otherwise, this Covenant shall continue in effect in perpetuity.

### ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing herein shall be construed to be a grant or dedication, or offer to grant or dedicate, the Property or any portion thereof to the public for any purposes whatsoever.

5.2 Notices. All notices, requests, demands, and other communications required or permitted under this Covenant shall be in writing (including telex and telegraphic communications) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated with confirming copy by mail, or mailed by

United States mail (postage prepaid), registered or certified, return receipt requested, addressed as follows:

If to Covenantor: FMC Technologies, Inc.  
Attn: JOSEPH J. MEYER  
200 East Randolph Drive  
Chicago, Illinois 60601

With Copy To: FMC Technologies, Inc.  
Legal Department  
Attn: Dawn Gard  
200 East Randolph Drive  
Chicago, Illinois 60601

If to Covenantee: California Regional Water Quality Control Board, Central  
Valley Region  
Attn: Russell Walls, RCE  
1685 E Street  
Fresno, California 93706

Either party may from time to time, by written notice to the other, designate a different address which shall be substituted for that specified above. If any notice or other document is sent by United States mail as provided above, the same shall be deemed fully delivered and received two (2) business days after mailing as provided above. If any notice or other document is sent by Federal Express or other responsible overnight courier as provided for above, the same shall be deemed fully delivered and received one (1) business day after delivery to Federal Express or such other responsible overnight courier as provided above.

5.3 Partial Invalidity. If any portion of the Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

5.5 Successors and Assigns. This Covenant shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, except as provided in Article 1.2. If the jurisdiction of the Covenantee over environmental matters relating to the Property is at any time delegated to a different governmental agency, such agency shall succeed to the Covenantee's rights hereunder. If at any time no governmental agency has jurisdiction over environmental matters relating to the Property, this Covenant shall thereafter be of no further force or effect. As used herein, the terms Covenantor and Covenantee shall include their successors and assigns.

5.6 Complete Agreement. This Covenant evidences the complete agreement among the Covenantee and the Covenantor, and supersedes all prior offers, contracts, agreements and arrangements between the parties concerning the Property. Except as provided in Article 4, this Covenant may not be changed, modified or rescinded except in a writing, that is recorded in

the official records of Tulare County, and which is signed and acknowledged by Covenantee and the party owning the portion of the Property as to which such change, modification or rescission will apply, and any attempt at actual or oral modification shall be void and of no effect.

5.7 Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one and the same Covenant.

IN WITNESS WHEREOF, Covenantor and Covenantee have executed this Covenant as of the date set forth above.

**"Covenantor"**

FMC TECHNOLOGIES, INC.,  
a Delaware corporation

By: Joseph J. Meyer  
Name: JOSEPH J. MEYER  
Its: ASSISTANT TREASURER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**"Covenantee"**

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, CENTRAL VALLEY  
REGION,  
a California public agency


By: M. Catherine George  
Name: M. Catherine George  
Its: Legal Counsel

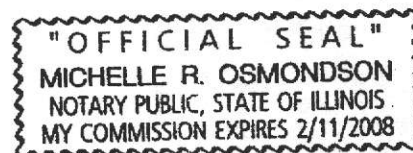
**SEE ATTACHMENT FOR  
OFFICIAL NOTARIZATION**



State of Illinois     )  
County of Cook     )

On this 9th day of March, 2005, before the undersigned, a notary public for the State of Illinois, personally appeared Joseph J. Meyer, Assistant Treasurer of FMC Technologies, Inc., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

  
Notary Public



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

San Diego

ss.

On February 26<sup>th</sup>, 2005 before me,

Date

Kristen Squires, notary public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

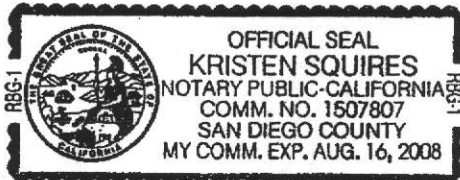
personally appeared

M. Catherine George

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Covenant & Agreement to restrict use of property.

Document Date: Feb. 26<sup>th</sup>, 2005

Number of Pages: 10

Signer(s) Other Than Named Above: none

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

## EXHIBIT "A"

### Legal Description of Property

All of the real property in the unincorporated area of the County of TULARE, State of California, described as follows:

ALL THAT PORTION OF LOTS 4 AND 5 OF CALIDONIA COLONY, IN THE UNINCORPORATED AREA OF THE COUNTY OF TULARE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7, PAGE 3 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 20 SOUTH, RANGE 26 EAST, M.D.B.&M., DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 11, SAID POINT BEARING SOUTH 325.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 11, SAID POINT OF COMMENCEMENT ALSO BEING NORTH 2317.44 FEET FROM THE SOUTHWEST CORNER OF SECTION 11; THENCE SOUTH 88°35' EAST, 40.00 FEET TO A POINT WHICH IS 15.00 FEET EAST OF THE WESTERLY LINE AND 300.00 FEET SOUTH OF THE NORTHERLY LINE OF LOT 4 OF CALIDONIA COLONY, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING OF THIS PARCEL; THENCE CONTINUING SOUTH 88°35' EAST, 622.70 FEET, PARALLEL TO AND 300.00 FEET SOUTH OF THE NORTHERLY LINE OF LOT 4 TO A POINT ON THE EASTERLY LINE OF LOT 4; THENCE SOUTH 699.27 FEET, ALONG THE EASTERLY LINES OF LOTS 4 AND 5 TO A POINT 359.35 FEET SOUTH OF THE NORTHEAST CORNER OF LOT 5; THENCE NORTH 88°37'30" WEST, 622.80 FEET, PARALLEL TO AND 359.35 FEET SOUTH OF THE NORTHERLY LINE OF LOT 5, TO A POINT 15.00 FEET EAST OF THE WESTERLY LINE OF LOT 5; THENCE NORTH 699.71 FEET, PARALLEL TO AND 15.00 FEET EAST OF THE WESTERLY LINES OF LOTS 4 AND 5 TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE MINERAL RIGHTS AS RESERVED IN THE FOLLOWING DEEDS:

(1) DEED RECORDED FEBRUARY 28, 1944 IN BOOK 1061, PAGE 339 OF OFFICIAL RECORDS.

(2) DEED RECORDED FEBRUARY 11, 1952 IN BOOK 1569, PAGE 306 OF OFFICIAL RECORDS.

APN: 199-190-023

**EXHIBIT "B"**

**Northeast Dry Well Area**

The Property is rectangular in shape, and the Northeast Dry Well Area consists of a rectangular area in the Northerly most 110 feet by the Easterly most 60 feet of the property.